

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

SHEILA C. SHAFER,

No. 3:15-cv-01489-MO

Plaintiff,

v.

OPINION AND ORDER

**HARMONY GUEST HOME,
INC., *an Oregon Corporation*,**

Defendant.

MOSMAN, J.

Defendant Harmony Guest Home, Inc. moves this court to dismiss Plaintiff's statutory Family Medical Leave Act (FMLA) claim and wrongful discharge claim. Per agreement of the parties, Defendant's motion to dismiss [14] is GRANTED in part and DENIED in part.

Defendant seeks dismissal of Plaintiff's FMLA claim, arguing that Plaintiff's employment was not covered by the FMLA. For FMLA protections to apply, an employer must be a covered employer and an employee must be an eligible employee. Defendant contends that it is not a covered employer and Plaintiff was not a covered employee as defined under 29 U.S.C. § 2611. (Mot. to Dismiss [14] at 3–4.) In her response, Plaintiff concedes that Defendant was not a covered employer and does not oppose the dismissal of her FMLA claim on these grounds. (Pl. Resp. [17] at 1–2.). Therefore, Defendant's motion to dismiss Plaintiff's FMLA claim is granted.

Defendant also seeks dismissal of Plaintiff's wrongful discharge claim, arguing that the wrongful discharge claim is supported solely by Plaintiff's FMLA claim. (Mot. to Dismiss [14]

at 4.) Plaintiff responds that her wrongful discharge claim is supported by the Oregon Family Leave Act (OFLA) in addition to the FMLA. (Pl. Resp. [17] at 2.) Therefore, even with the dismissal of Plaintiff's FMLA claim, her wrongful discharge claim can survive based on the OFLA. In its reply, Defendant concedes that Plaintiff adequately stated a claim for common law wrongful discharged based on the OFLA. (Def. Reply [18] at 1–2.) Therefore, Defendant's motion to dismiss Plaintiff's wrongful discharge claim is denied.

Per agreement of the parties, Defendant's motion to dismiss [14] is GRANTED in part and DENIED in part. Plaintiff's FMLA claim is DISMISSED while Plaintiff's wrongful discharge claim survives.

DATED this 8th day of December, 2015.

/s/ Michael W. Mosman
MICHAEL W. MOSMAN
United States District Judge